

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:02CR3038
)	
v.)	
)	
EUGENE A. McNEALLY,)	MEMORANDUM OPINION
)	
Defendant.)	
)	

This matter is before the Court on defendant's motion to vacate under 28 U.S.C. § 2255 (Filing No. 142). Having reviewed defendant's motion and the applicable law, the Court will deny defendant's motion.

Defendant filed a § 2255 motion with the Court on September 8, 2005, seeking vacation of the judgment handed down by the Court on March 8, 2004, which was subsequently affirmed on appeal. Defendant claims that the Court's judgment is void because the Court lacked subject matter jurisdiction to prosecute him under 26 U.S.C. § 7203 and 18 U.S.C. 1001(3).¹ This argument, however, lacks merit.

¹ Defendant also argues that special agents Janelle Glenn and Frank Roby of the Internal Revenue Service violated his Fifth Amendment rights by failing to timely administer him his Miranda warnings. This argument should have been raised on appeal and will not be considered by the Court here. See *Reid v. United States*, 976 F.2d 446, 447-48 (8th Cir. 1992) (when defendant could have presented claim on direct appeal section 2255 court need not consider it absent showing cause and prejudice).

The district courts of the United States have original jurisdiction over all offenses committed against the laws of the United States. 18 U.S.C. § 3231. Accordingly, defendant's prosecution for willful failure to file tax returns under 26 U.S.C. § 7203 and making false statements in a matter within the jurisdiction of a federal agency under 18 U.S.C. § 1001(3) was within this Court's subject matter jurisdiction. See *United States v. Spurgeon*, 671 F.2d 1198, 1199 (8th Cir. 1982) and *United States v. Marks*, 691 F.2d 428, 429 (8th Cir. 1982) (rejecting defendant's contention that district court lacked subject matter jurisdiction over his prosecution for violating 18 U.S.C. § 7203). Accordingly, a separate order will be entered herein denying defendant's § 2255 motion.

DATED this 9th day of September, 2005.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court